

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDRES GOMEZ,

CV 17-3467-RSWL-AS

Plaintiff,

ORDER re: Defendant's
Motion to Dismiss
Plaintiff's Complaint
[9]

V.

KOJI SHIMOOKA D/B/A DOYA
DOYA; DOES, 1 through 10,

Defendants.

Plaintiff Andres Gomez ("Plaintiff") brings this Action against Defendant Koji Shimooka d/b/a Doya Doya's ("Defendant") business operation that allegedly is not accessible to Plaintiff, a physically disabled individual. Compl. ¶ 10, ECF No. 1. Currently before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) ("Motion") [9].

1 The Court **GRANTS** Defendant's Motion as to the Americans
2 with Disabilities Act claim **WITH LEAVE TO AMEND** and
3 declines to exercise supplemental jurisdiction over all
4 remaining claims in the Complaint.

5 **I. BACKGROUND**

6 **A. Factual Background**

7 Plaintiff is a California citizen with a physical
8 disability requiring the use of a wheelchair whenever
9 traveling in public. Compl. ¶ 1. Defendant operates
10 the restaurant Doya Doya at 2140 Artesia Boulevard,
11 Torrance, California. Id. ¶¶ 2, 9. Plaintiff visited
12 Doya Doya on January 26, 2017 and March 1, 2017 and
13 encountered the following violations relating to the
14 parking space designated for disabled persons: (1) the
15 International Symbol of Accessibility identification
16 sign was missing; (2) there was no signage such as
17 "Minimum Fine \$250," "Van Accessible," or "Unauthorized
18 Parking"; (3) the space was not van accessible; and
19 (4) the ground was not painted as required by law. Id.
20 ¶¶ 9-10.

21 Plaintiff wishes to patronize Doya Doya again
22 because of its convenient location; however, the
23 violations deter him from returning. Id. ¶ 11.
24 Plaintiff alleges that Defendant knew of these
25 violations and has the financial resources to remedy
26 them without much difficulty or expense. Id. ¶¶ 13-14.

27 **B. Procedural Background**

28 Plaintiff filed the Complaint [1] on May 8, 2017,

1 asserting claims for (1) negligence and violations of
2 the (2) Americans with Disabilities Act ("ADA"), 42
3 U.S.C. § 12131, *et seq.*; (3) California Unruh Civil
4 Rights Act ("Unruh"), Cal. Civ. Code §§ 51-52, *et seq.*;
5 (4) California Disabled Persons Act, Cal. Civ. Code
6 § 54, *et seq.*; and (5) California Unfair Competition
7 Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*
8 Compl. ¶¶ 15-45. On July 20, 2017, Defendant filed the
9 instant Motion to Dismiss [9-1]. Plaintiff did not
10 oppose this Motion, and Defendant did not file a reply.

11 **II. DISCUSSION**

12 **A. Legal Standard**

13 Federal Rule of Civil Procedure 12(b)(6) allows a
14 party to move for dismissal of one or more claims if
15 the pleading fails to state a claim upon which relief
16 can be granted. A complaint must "contain sufficient
17 factual matter, accepted as true, to state a claim to
18 relief that is plausible on its face." Ashcroft v.
19 Iqbal, 556 U.S. 662, 678 (2009)(internal quotation
20 marks omitted)(citation omitted). Dismissal can be
21 based on a "lack of a cognizable legal theory or the
22 absence of sufficient facts alleged under a cognizable
23 legal theory." Balistreri v. Pacifica Police Dep't,
24 901 F.2d 696, 699 (9th Cir. 1990)(citation omitted).

25 "In ruling on a 12(b)(6) motion, a court may
26 generally consider only allegations contained in the
27 pleadings, exhibits attached to the complaint, and
28 matters properly subject to judicial notice." Swartz

1 v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007)(citation
2 omitted). A court must presume all factual allegations
3 of the complaint to be true and draw all reasonable
4 inferences in favor of the non-moving party. Klarfeld
5 v. United States, 944 F.2d 583, 585 (9th Cir. 1991).
6 The question presented by a motion to dismiss is not
7 whether the plaintiff will ultimately prevail, but
8 whether the plaintiff has alleged sufficient factual
9 grounds to support a plausible claim to relief, thereby
10 entitling the plaintiff to offer evidence in support of
11 its claim. Iqbal, 556 U.S. at 678; Swierkiewicz v.
12 Sorema N.A., 534 U.S. 506, 511 (2002). While a
13 complaint need not contain detailed factual
14 allegations, a plaintiff must provide more than "labels
15 and conclusions" or "a formulaic recitation of a cause
16 of action's elements." Bell Atl. Corp. v. Twombly, 550
17 U.S. 544, 555 (2007).

18 **B. Analysis**

19 As an initial matter, because Plaintiff does not
20 oppose the instant Motion, the Court **DISMISSES** the
21 Complaint. C.D. Cal. R. 7-12 ("The failure to file any
22 required document . . . may be deemed consent to the
23 granting or denial of the motion."). Additionally, the
24 Court discusses the merits of Plaintiff's allegations
25 for negligence and violation of the ADA, Unruh,
26 California Disabled Persons Act, and UCL.

27 1. Federal Law Claim: Violation of ADA

28 To state a claim for ADA violation, the plaintiff

1 must plead that "(1) she is disabled within the meaning
2 of the ADA; (2) the defendant is a private entity that
3 owns, leases, or operates a place of public
4 accommodation; and (3) the plaintiff was denied public
5 accommodations by the defendant because of her
6 disability." *Molski v. M.J. Cable, Inc.*, 481 F.3d 724,
7 730 (9th Cir. 2007)(citing 42 U.S.C. §§ 12182(a)-(b)).
8 Defendant does not dispute the first two elements, and
9 Plaintiff properly pled both his disability and that
10 Defendant operates a place of public accommodation—the
11 restaurant Doya Doya. Compl. ¶¶ 4-5, 9.

12 The third element is satisfied if the defendant did
13 not remove architectural barriers when removal was
14 readily achievable. 28 U.S.C. § 12182(b)(2)(A)(iv).
15 Defendant contends that removal of the alleged
16 barriers, all of which relate to the disabled parking
17 space, was not readily achievable because Defendant had
18 no right to control any parking space. Mot. 3:20-22.
19 Defendant attaches its Lease of the restaurant premises
20 to the Motion in support of this contention. Mot., Ex.
21 A. However, the Court may not consider the Lease in
22 determining whether to grant Defendant's Motion. See
23 Swartz, 476 F.3d at 763 (citation omitted). Instead,
24 the Court may only consider the sufficiency of
25 Plaintiff's factual allegations. Id. (citation
26 omitted).

27 Regardless, Plaintiff's Complaint is deficient as
28 to the third element. Plaintiff alleges, "Defendant[]

1 had and still ha[s] control and dominion over the
2 conditions at this location." Compl. ¶ 14. Such a
3 threadbare allegation does not meet the federal notice
4 pleading standards. Twombly, 550 U.S. at 555.
5 Plaintiff fails to connect Defendant to the parking lot
6 at all. Plaintiff does not allege that the parking lot
7 is part of Defendant's premises or that Defendant had
8 any right to the parking spaces. In this regard,
9 Plaintiff fails to aver how Defendant could readily
10 achieve "removal" of the "barriers" relating to the
11 parking space. 28 U.S.C. § 12182(b)(2)(A)(iv).

12 Thus, the Court **GRANTS** Defendant's Motion to
13 Dismiss as to the ADA claim.

14 2. State Law Claims: Negligence and Violation of
15 Unruh, California's Disabled Persons Act, and
16 UCL

17 After dismissing the federal claim through which
18 the court has original jurisdiction, the court may
19 elect not to exercise supplemental jurisdiction over
20 remaining state law claims under 28 U.S.C.
21 § 1367(c)(3). Binder v. Gillespie, 184 F.3d 1059, 1066
22 (9th Cir. 1999). Particularly here, where the Court
23 dismisses the only federal law claim at the outset of
24 the case, the Court should decline supplemental
25 jurisdiction. Carnegie-Mellon Univ. v. Cohill, 484
26 U.S. 343, 351 (1988) ("When the single federal-law claim
27 in the action was eliminated at an early stage of the
28 litigation, the District Court had a powerful reason to

1 choose not to exercise jurisdiction.").

2 The Court thus declines to exercise supplemental
3 jurisdiction over Plaintiff's remaining state law
4 claims—negligence and violation of Unruh, California's
5 Disabled Persons Act, and UCL. Gawf v. Cnty. of San
6 Benito, C12-00220 HRL, 2013 WL 1366031, at *1 (N.D.
7 Cal. March 31, 2013)(granting defendants' motion to
8 dismiss plaintiff's federal claims with leave to amend
9 and declining supplemental jurisdiction over
10 plaintiff's state law claims "unless and until
11 plaintiff can adequately plead a federal claim for
12 relief").

13 3. Leave to Amend

14 Federal Rule of Civil Procedure 15(a) provides that
15 a party may amend their complaint once "as a matter of
16 course" before a responsive pleading is served. Fed.
17 R. Civ. P. 15(a). After that, the "party may amend the
18 party's pleading only by leave of court or by written
19 consent of the adverse party and leave shall be freely
20 given when justice so requires." Id. "Rule 15's
21 policy of favoring amendments to pleadings should be
22 applied with 'extreme liberality.'" United States v.
23 Webb, 655 F.2d 977, 979 (9th Cir. 1981)(internal
24 quotations and citation omitted). But if any amendment
25 to the pleadings would be futile, leave to amend should
26 not be granted. See Thinket Ink Info. Res., Inc. v.
27 Sun Microsystems, Inc., 368 F.3d 1053, 1061 (9th Cir.
28 2004)(quoting Saul v. United States, 928 F.2d 829, 843

1 (9th Cir. 1991)).

2 The Court **GRANTS LEAVE TO AMEND** for the ADA claim
3 because Plaintiff has not previously amended his
4 Complaint and the claim could be plausible were he to
5 allege facts showing Defendant's rights to the parking
6 lot such that Defendant could remedy the alleged
7 violations.

8 **III. CONCLUSION**

9 Based on the foregoing, the Court **GRANTS**
10 Defendant's Motion to Dismiss **WITH 21 DAYS LEAVE TO**
11 **AMEND** as to the ADA cause of action [9]. As for the
12 remaining state law claims, unless and until Plaintiff
13 amends the Complaint to sufficiently state an ADA
14 claim, the Court does not exercise supplemental
15 jurisdiction.

16 **IT IS SO ORDERED.**

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18 DATED: **9/15/2017**

s/ RONALD S.W. LEW

19 **HONORABLE RONALD S.W. LEW**
20 Senior U.S. District Judge
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